HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL No. 762 OF 2006

-

-

Between:

N. Appa Rao

……Appellant

And

The Visakhapatnam Port Trust,
Visakhapatnam, rep. by Chairman,
Visakhapatnam and another

……Respondents

:: JUDGMENT ::

Counsel for the Appellants : Sri P. Satyanarayana

Counsel for the Respondents : Sri E.V. Suresh Kumar representing
Sri K. Srinivasa Murthy

Dated: 14-07-2006

Per G.S. SINGHVI, CJ

Having failed to persuade the learned Single Judge to entertain his prayer for staying the operation of communication dated 5-4-2006 vide which Chief Mechanical Engineer, Visakhapatnam Port Trust, Visakhapatnam (respondent No.2) rejected his representation for reversion to the post of Electrician Grade-I, which would have enabled him to continue in service up to the age of 60 years, the appellant has preferred this appeal.

The appellant joined service of Visakhapatnam Port Trust (for short 'the Trust') as Khalasi on 10-2-1971. In the course of service, he received several promotions. With effect from 1-4-2001, he was promoted as Sub-Station Supervisor on ad hoc basis. He joined that post without reserving his right to seek reversion as Electrician Grade-I. After having worked as Sub-Station Supervisor for a period of almost five years and just before his anticipated superannuation on 31-05-2006, he made representations for reversion to the post of Electrician Grade–I. The Chairman of the Trust rejected his representation vide communication dated 1-5-2006. This was reiterated by respondent No.2 vide letter dated 5-4-2006. In the meanwhile, respondent No.2 issued letter dated 2-2-2006 whereby the appellant was informed that he will retire from service with effect from 31-5-2006 in terms of Visakhapatnam Port Employees (Retirement Regulations), 1989 (for short, 'the 1989 Regulations').

The appellant challenged the refusal of the respondents to accept his prayer for reversion to the post of Electrician Grade-I as also his retirement with effect from 31-5-2006 by claiming that being a substantive Electrician Grade-I, he falls within the definition of 'workman' contained in Regulation 2 (v) and in terms of Regulation 3, he is entitled to continue in service up to the age of 60 years.

The learned Single Judge did not feel convinced with the

prima facie nature of the claim made in the writ petition and dismissed WPMP No.12982 of 2006 filed by the appellant with the observation that in case, the petitioner (appellant herein) succeeds in the writ petition, he will be entitled to monetary benefits.

Sri P. Satyanarayana made strenuous efforts to persuade us to record a conclusive finding that the appellant is entitled to be treated as Electrician Grade–I for the purposes of 1989 Regulations and, in that capacity, he is entitled to continue in service up to the age of 60 years, but we have not felt persuaded to agree with him. Rather, we are prima facie convinced that after having unreservedly accepted promotion as Sub-Station Supervisor in April 2001, it was not open to the appellant to seek his reversion in the year 2006 with his eye on the age of retirement. If the appellant thought that by virtue of promotion to the post of Sub-Station Supervisor, he may lose two years of service then he should have declined to accept promotion and should have insisted that he be allowed to continue in service as Electrician Grade-I. However, the fact of the matter is that he not only accepted the post of Sub-Station Supervisor, but enjoyed the benefits of the promoted post for a period of almost five years. He represented for reversion only in the year 2006 which, in our view, was rightly declined by the competent authorities.

In the premise aforesaid, we hold that the appellant has failed to make out a prima facie case for issue of a mandatory direction to the respondents to allow him to continue in service up to the age of 60 years.

We are further of the view that the two important factors viz., balance of convenience and irreparable injury are also against the grant of interim relief. If the petition is ultimately allowed, the Court may nullify the action of the respondents to retire the appellant with

effect from 31-05-2006. In that event, he will become entitled to all monetary benefits. If, on the other hand, the writ petition is dismissed and, in the meanwhile, the appellant is continued in service on the basis of interim order passed by the Court, it will become impossible for the employer to recover the wages paid to him during the course of active service. In such an eventuality, the Court will be extremely reluctant to direct the appellant to deposit the amount received by him in the form of pay and allowances in lieu of having actually worked in the post of Electrician Grade–I.

In the result, the appeal is dismissed.

At this stage, learned counsel made a request for grant of out of turn hearing. But keeping in view the pendency of over 1,50,000 cases which are waiting in the queue for being heard by the Court, we do not find any valid ground or justification to entertain the request of the learned counsel.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY, J

14-07-2006
svs